

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re:
NEW ENGLAND CONFECTIONERY
COMPANY, INC.,
Debtor.

CHAPTER 7
CASE NO. 18-11217-MSH

HAROLD B. MURPHY, CHAPTER 11
TRUSTEE OF NEW ENGLAND
CONFECTIONERY COMPANY, INC.,

Adv. Pro. No. 19-01011

Plaintiff,

v.

ACAS, LLC, *et al.*

Defendant.

**JOINT STIPULATION OF DISMISSAL WITHOUT PREJUDICE OF DEFENDANTS
ARES MANAGEMENT LLC AND ARES MANAGEMENT L.P.**

WHEREAS, on August 31, 2018, the Trustee filed the above-captioned case in the United States District Court for the District of Massachusetts against, *inter alia*, Defendants ACAS, LLC (“ACAS”), Ares Capital Corporation, Ares Management LLC, Ares Management L.P., Ares Capital Management LLC, Myung Yi, Anuj Khanna, Gordon O’Brien, Stephen Chehi, Daniel Katz (collectively, “Defendants”);¹

WHEREAS, the Complaint in this action asserts that Defendants breached a fiduciary duty or aided and abetted a breach of fiduciary duty owed to New England Confectionery Company, Inc. (“NECCO Candy”) [ECF No. 2];

WHEREAS, Defendants have filed [ECF Nos. 26, 27] and the Trustee has opposed [ECF No. 31] a motion to dismiss the Complaint, which motion remains pending;

¹ Michael McGee, Douglas Weekes, and David Eaton are also Defendants in this action. They are represented by other counsel and are not party to this stipulation.

WHEREAS, on January 16, 2019, the District Court entered its order referring the above-captioned case to this Court [ECF No. 1];

WHEREAS, counsel for Defendants represents that Ares Management LLC and Ares Management L.P. had no direct interest in, and took no action with respect to, NECCO Candy;

WHEREAS, counsel for Defendants represents that Messrs. Chehi and Katz took no action on behalf of Ares Management LLC and Ares Management L.P. with respect to NECCO Candy;

WHEREAS, the Trustee has, upon consideration of the representations of counsel for the Defendants, agreed to dismiss without prejudice the claims filed against Ares Management LLC and Ares Management L.P.;

IT IS HEREBY STIPULATED, BY, BETWEEN AND AMONG THE UNDERSIGNED PARTIES, that, the Complaint shall be dismissed without prejudice as to Ares Management LLC and Ares Management L.P. It is further stipulated that, should the Trustee refile claims against Ares Management LLC and Ares Management L.P. that are substantially identical to the dismissed claims, the refiled claims shall be deemed filed as of the date of filing of the Complaint. Each party to bear its own costs.

Dated: February 11, 2019

BY: /s/ Jonathan M. Horne
Daniel C. Cohn (BBO #090780)
Jonathan M. Horne (BBO #673098)
MURTHA CULLINA LLP
99 High Street
Boston, Massachusetts 02110-2320
(617) 457-4000 Telephone
dcohn@murthalaw.com
jhorne@murthalaw.com

Michael L. Bernstein (admitted *pro hac vice*)
David B. Bergman (admitted *pro hac vice*)
ARNOLD & PORTER
601 Massachusetts Avenue NW
Washington, D.C. 20001
Telephone: (202) 942-5000

Counsel for Defendants ACAS, Ares Capital Corporation, Ares Management LLC, Ares Management L.P., Ares Capital Management LLC, Yi, Khanna, O'Brien, Chehi, and Katz

Dated: February 11, 2019

BY: /s/ David L. Evans
David L. Evans (BBO# 156695)
Charles R. Bennett (BBO# 037380)
Christopher M. Condon (BBO# 652430)
MURPHY & KING
One Beacon Street
Boston, Massachusetts 02108
Tel: (617) 423-0400
devans@murphyking.com
cbennett@murphyking.com
ccondon@murphyking.com

Counsel for Harold B. Murphy, Chapter 11 Trustee of New England Confectionery Company, Inc.

APPROVED AND SO ORDERED:

THE HONORABLE MELVIN S. HOFFMAN
UNITED STATES BANKRUPTCY JUDGE